

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

*Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.*

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14 CFR Part 39

[Docket No. 93-ANE-57]

Airworthiness Directives; International Aero Engines AG Model V2500-A1 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to International Aero Engines AG Model V2500-A1 engines. That action would have required the installation of damping wires and anti-fret coating on high pressure compressor disks and blades. Since the issuance of the NPRM, the FAA has determined that the probability of an unsafe condition is extremely remote, and that all affected engines in service have been modified as proposed. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT:

Marc Bouthillier, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7135, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to International Aero Engines AG (IAE) Model V2500-A1 engines, was published in the **Federal Register** on December 1, 1993 (58 FR 63307). The proposed rule would have required the installation of damping wires and an anti-fret coating to high pressure compressor (HPC) disks and blades. That action was prompted by seven occurrences of HPC stage 7 and 8 blade failures. The proposed actions were intended to prevent HPC blade failures, which could result in engine inflight shutdowns.

Since the issuance of that notice of proposed rulemaking (NPRM), the FAA has conducted additional airworthiness assessment of the described problem, and has determined that the probability of a hazardous or unsafe condition is extremely remote. This assessment was

conducted in accordance with the guidelines of a continued airworthiness assessment methodology process currently in use.

In addition, the FAA has determined that all affected engines have been modified as proposed. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 93-ANE-57, published in the **Federal Register** on December 1, 1993, (58 FR 63307), is withdrawn.

Issued in Burlington, Massachusetts, on May 15, 1995.

James C. Jones,

*Acting Manager, Engine and Propeller
Directorate, Aircraft Certification Service.*

[FR Doc. 95-12439 Filed 5-19-95; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 10 and 966

[Docket No. R-95-1772; FR-3819-P-01]

RIN 2501-AB92

Public Housing Lease and Grievance Procedures

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing to amend its regulations governing eviction from public and Indian housing. If HUD determines that local law requires a pre-eviction due process hearing in court (known as a "due process determination"), a tenant is not entitled to a hearing by the housing authority before eviction for drug-related or other criminal activity. This proposed rule would clarify that HUD is not required

to use notice and comment rulemaking procedures for issuance of a due process determination.

DATES: Comments due date: July 21, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title and to the specific sections in the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Sherone Ivey, Acting Director, Occupancy Division, Room 4206, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; Telephone numbers (202) 708-0744; (202) 708-0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Issuance of Due Process Determination

This proposed rule would clarify that HUD is not required to use HUD's notice and comment rulemaking procedures when HUD determines that the law of a jurisdiction requires a due process court hearing before eviction of a public housing tenant.

Under 42 U.S.C. 1437d(k), a housing authority is generally required to provide a tenant with the opportunity for an administrative hearing before the commencement of eviction proceedings in the local landlord-tenant courts. However, the statute and the implementing HUD regulations at 24 CFR part 966 permit the housing authority to bypass the administrative hearing for evictions involving a tenant engaged in certain criminal activity.

Specifically, 24 CFR 966.51 requires that the eviction involve "any drug-related criminal activity" or "[a]ny criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises" of the public housing residents and employees. Furthermore, HUD must first determine that the law of the jurisdiction requires a pre-eviction court hearing that provides the basic elements of due process as further defined by 24 CFR 966.53(c). This determination is known as a "due process determination." (24 CFR 966.51(2)(i)).

HUD has voluntarily chosen to provide for public participation in rulemaking for HUD programs and functions. Under 24 CFR part 10, HUD invites public comment on the proposed rules it publishes in the **Federal Register**. In HUD's view, the issuance of a particular due process determination is not a rule, and is not subject to part 10's notice and comment rulemaking requirements. HUD's due process determinations are not discretionary "policy" determinations permitting public housing authorities to bypass the grievance process; rather, a due process determination is an application of an existing regulation to the law of a specific jurisdiction. In accordance with HUD's function as defined by federal law, HUD determines whether the State or local law governing local eviction procedures are consistent with the elements of due process as further defined in § 966.53(c).

Up to this time, all HUD due process determinations have been issued by letter to the governor of each affected State. The HUD determinations were not published as regulations through notice and comment rulemaking under part 10 because HUD did not view them to be rules within the meaning of part 10. However, in its recent decision in *Yesler Terrace Community Council v. Cisneros*, the Ninth Circuit held that the due process determination for the State of Washington was a rule under part 10, and that the part 10 notice and comment rulemaking procedures therefore applied.

Although the decision in the *Yesler* case only concerns due process determinations for the State of Washington, HUD recognizes that Ninth Circuit courts are bound by the precedent established by this case. For this reason, public housing authorities in the States comprising the Ninth Circuit cannot rely on the HUD due process determinations issued for those States.

In addition, even for jurisdictions outside the Ninth Circuit, the decision in the *Yesler* case will inevitably lead to dispute and litigation as to the ability of public housing authorities to bypass the administrative grievance process pursuant to a HUD due process determination. In and out of the Ninth Circuit therefore, the *Yesler* decision will inevitably impede the efforts of housing authorities to speedily evict tenants engaged in serious criminal activities.

To remedy this serious situation, HUD proposes to amend 24 CFR part 10 to state unambiguously and explicitly that the part 10 notice and comment rulemaking procedures do not apply to

a public housing due process determination. Since the *Yesler* decision was explicitly based on the court's reading of the HUD part 10 regulation, the proposed rule would remove the legal and practical uncertainties proceeding from this decision.

In addition, this rule would amend HUD's public housing lease and grievance regulations to confirm that HUD is not required to utilize part 10's notice and comment procedures for the issuance of due process determinations. This proposed rule would also provide that for guidance of the public, HUD will publish in the **Federal Register** a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying, a copy of the legal analysis on which the due process determinations are based.

II. Eviction by Administrative Action

The rule currently provides that the PHA may evict the tenant "only by bringing a court action" (24 CFR 966.4(l)(4)). HUD proposes to amend the rule by providing that the PHA may also elect to evict the tenant by bringing an administrative action. The PHA may evict without bringing a court action if the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, but does not require a court determination of the rights and liabilities of the parties. (Proposed 24 CFR 966.4(l)(4)(ii)).

This amendment is intended to avoid the necessity for duplicative administrative and judicial hearings where State or local law allows a PHA to evict a tenant after a due process administrative hearing, but does not require a court hearing or court process to carry out the eviction. The proposed rule would provide that in order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure. The right to a hearing under the grievance procedure as defined by Federal statute and regulation grants a tenant the opportunity for a due process administrative hearing.

The Department is informed that under Hawaii State law, the Hawaii Housing Authority may evict a tenant after providing a due process administrative hearing. Hawaii State law does not require the Authority to bring a judicial action for eviction of a tenant. However, under HUD's current rule, the Authority may "only" evict the tenant by bringing a judicial action. Thus the Authority must both provide the opportunity for an administrative

hearing in accordance with Hawaii law, and then bring a separate judicial action for eviction of the tenant in accordance with the HUD rule.

HUD's current rule was intended to assure that public housing tenants may not be evicted without the opportunity for a fair and full hearing, and to preclude "self-help" eviction by the PHA landlord, without the opportunity for such a hearing. HUD believes that the administrative hearing required by Hawaii law, and the law of any other State with analogous procedures, can protect the due process rights of the tenant. Consequently, the Department is amending the regulation to permit eviction without judicial action to determine the rights of the parties. Such eviction is only allowed as permitted by local law, and where the PHA provides the opportunity for a pre-eviction hearing under the PHA grievance procedures.

III. Regulatory Reinvention

Consistent with Executive Order 12866, and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on the subject of Regulatory Reinvention, the Department is reviewing all its regulations to determine whether certain regulations can be eliminated, streamlined or consolidated with other regulations. As part of this review, this proposed rule, at the final rule stage, may undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of these regulations, the Department welcomes comments on how this proposed rule may be made more understandable and less burdensome.

IV. Other Matters

A. Impact on the Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies contained and procedures contained in this proposed rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal

government and the States, or on the distribution of power and responsibilities among the various levels of government.

The policies contained in this proposed rule merely require that HUD determine whether pre-eviction court hearings required by the local jurisdiction provide the basic elements of due process as further defined by HUD regulation. Those housing authorities situated in jurisdictions for which HUD has made such a due process determination are permitted to bypass HUD-mandated administrative hearings and to rely exclusively on the local courts.

This proposed rule would provide that HUD is not required to use 24 CFR part 10's notice and comment procedures for the issuance of due process determinations. This proposed rule would effect no changes in the current relationships between the Federal government, the States and their political subdivisions.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule will not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under this order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)) has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant impact on a substantial number of small entities. This proposed rule would merely provide for HUD's issuance of due process determinations without public notice and comment, and would not have any meaningful economic impact on any entity.

E. Regulatory Agenda

This proposed rule was listed as item 1370 in HUD's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23375) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

F. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any

changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh St., S.W., Washington, DC, 20410.

List of Subjects

24 CFR Part 10

Administrative practice and procedure.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

Accordingly, 24 CFR parts 10 and 966 are proposed to be amended as follows:

PART 10—RULEMAKING: POLICY AND PROCEDURES

1. The authority citation for part 10 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d).

2. Section 10.3 would be amended by adding a new paragraph (c) to read as follows:

§ 10.3 Applicability.

* * * * *

(c) This part is not applicable to a determination by HUD under 24 CFR part 966 (public housing) or 24 CFR part 905 (Indian housing) that the law of a jurisdiction requires that, prior to eviction, a tenant be given a hearing in court which provides the basic elements of due process ("due process determination").

PART 966—LEASE AND GRIEVANCE PROCEDURES

3. The authority citation for part 966 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437d(k), (l), and (n), and 3535(d).

4. In § 966.4, paragraph (l)(4) would be revised, to read as follows:

§ 966.4 Lease requirements.

* * * * *

(l) * * *

(4) *How tenant is evicted.* The PHA may evict the tenant from the unit either:

- (i) By bringing a court action, or;
- (ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction

hearing in accordance with the PHA grievance procedure.

* * * * *

5. In § 966.51, paragraph (a)(2) would be amended by redesignating paragraph (a)(2)(ii) as paragraph (a)(2)(iv) and by adding new paragraphs (a)(2)(ii) and (a)(2)(iii), to read as follows:

§ 966.51 Applicability.

(a) * * *

(2) * * *

(ii) The issuance of a due process determination by HUD is not subject to 24 CFR part 10, and HUD is not required to use notice and comment rulemaking procedures in considering or issuing a due process determination.

(iii) For guidance of the public, HUD will publish in the **Federal Register** a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

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Dated: February 14, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95-12461 Filed 5-19-95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 8121]

RIN 1512-AA07

Puget Sound Viticultural Area (94F-019P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), has received a petition for the establishment of a viticultural area in the State of Washington to be known as "Puget Sound." This proposal is the result of a petition submitted by Gerard and Jo Ann Bentryn, Owners-Winemakers of Bainbridge Island Vineyards.

DATES: Written comments must be received by July 6, 1995.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 812). Copies of the petition,